IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1826 OF 2005

M.R.Manoj,
EX,LME, N.171160-A,
resident of # 531, 10 'B' Cross
Road, New Town, Yelahanka,
Bangalore-560 064. Petitioner

vs.

1. Union of India, Aayakar Bhavan
New Marine Lines, Mumbai.

2. Chief of Naval Staff having its
office at Naval Head Quarters,
at Delhi.

3. Commodore Bureau of Sailors
having its office at Cheetah Camp,
Mankhurd, Bombay 400 088. Respondents

Mr.Shyam Mehta with Mr.Satendra Kumar for the petitioner.

Mr.S.S.Pakale for the respondents.

**CORAM : F.I.REBELLO &**
**ANOOP V. MOHTA,JJ.**

**DATED : 14th December, 2006**

**ORAL JUDGMENT (Per F.I.Rebello,J.).**

The petitioner was promoted to the rank of Acting Petty Officer Mechanical Engineer (POME) on 7th September, 2001 vide General Form dated 7th September 2001 with effect from 1st February, 2001. The petitioner was due to retire on 30th September 2003. However, before his retirement the petitioner was reverted to the rank of Low Medical Category (LME) with effect from 1st February, 2001 vide order dated 17th

September, 2003 containing General Form dated 17th September, 2003. The petitioner has approached this Court challenging the said order of reversion.

2. It is the case of the petitioner that under Navy Instructions no.2/96, the qualifications for promotion have been laid down. For promotion to the post of POEM the requirements are as under:

> "(b) Must be in possession of a Boiler-Room Watch keeping certificate of ICE Competency Certificate. This certificate may be awarded by the Engineer Officer of the Ship as soon as an Acting Petty Officer Engineering Mechanic is competent to take charge of a Boiler Room with boilers working at full power or all main propulsion ICE Units connected up. The Engineer Officer of the ship must be of the rank of Lieutenant or above. If he is of a lower rank, the certificate shall be awarded by an Engineer of the rank of Lieutenant or above detailed by the Administrative Authority. The award of this certificate is to be noted in sailor's History Sheet and in the Engine Room Register. Certificates (Form IN 589B) are to be issued to them and the Commodore, Bureau of Sailors is to be informed accordingly.
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> (c) In the event of failure to obtain the Boiler-Room Watch Keeping Certificate or ICR Competency Certificate within two years of being ranked Acting Petty Officer Engineering Mechanic, the case shall be reported to the Chief of the Naval Staff through the Commodore Bureau of Sailors with a view to reversion to Leading Engineering Mechanic for inefficiency.
> See Article 12 also."

. Under Article 27, Sailors who are placed in medical categories S3 A1 and S3 A2 (temporarily or permanently), even if otherwise eligible, shall not be promoted

without the prior approval of the Chief of the Naval Staff. Recommendations on such cases shall be forwarded to the Chief of the Naval Staff. Sanction was conveyed for promotion of the petitioner to the rank of Acting POME by communication dated 30th July, 2001 after following due procedure. The relevant para of which reads as under:

> "Approval of the Chief of the Naval Staff under provision of Article 27 of Navy Instruction 2/96 is conveyed to the promotion of M R Manoj, LME, No.171160 A To Ag. POME with effect from 01-02-2001 subject to physical constrains imposed being in low medical category."

. The petitioner also relies on medical certificate issued in General Form whereby the requirement of swimming test was waived for the petitioner. Petitioner contends that once he was put in medical category S3 A2, the petitioner could not have been deputed for Sea service. For attaining the qualifications required for promotion to the post of POME requires, that the sailor must work on board a ship. In the instant case, considering the petitioner's low medical category, the petitioner could not have been deputed on board a ship and consequently could not have obtained the said qualification. The submission is that once considering the exercise of power by the Naval Chief under Article 27, the petitioner was waived from having the qualification as laid down in Article 14.

3. On behalf of the respondents, a reply has been filed. It is pointed out that the petitioner was placed in low medical category S3 A2 (P) Permanent (since 22-12-1999) and due to low medical category his positioning on board a ship for sea service was not permissible in accordance with Navy Order 14/2001. The petitioner, however, was scheduled for a review of his category on 22-12-2001 and, therefore, he was promoted to the rank of Acting POME on 7th September 2001 anticipating that his medical category could be upgraded as had happened in the past, to facilitate his positioning onboard the ship in order to obtain the mandatory BWKC. The petitioner was given equal opportunity for promotion to qualify and meet the requirements for confirmation in the senior rank. This could in no way be construed as waiving of the mandatory requirement of BWKC. It has also been pointed out that in the medical board held on 21st July 1998 the petitioner's category was upgraded to S2 A2(P) (T-24). At the review medical board held on 15th March 1999, 5th May 1999 and 25th October, 1999, the petitioner's medical category was maintained as S3A2 (H) T-24. Eventually during the review Medical Board held on 3rd March 2000, his medical category was converted to S3A2 (H) PMT with review due on 22nd December 2001. The petitioner was discharged/released from Naval service on

30th September as per Navy Instructions 2/96. As per Navy Instructions 2/96, it is mandatory to obtain Boiler Watch Keeping/ICE Competency or equivalent certificate within two weeks of obtaining the rank of Ag.POME.

4. Respondents state that the petitioner was promoted subject to the physical constraints imposed being in low medical category i.e. swimming, physical efficiency test (PET) in accordance with paragraph 28 of Navy Instruction 2/96. That does not imply it is submitted that Naval Headquarters recognized the petitioner's disability and exempted him from fulfilling the condition pertaining to obtaining the BWKC certificate. As the petitioner's review medical board was due to be held on 22nd December 2001, there was a possibility that the petitioner's disability would be removed by the medical board enabling his positioning onboard a ship.

5. The issue for consideration before us is whether on the Naval Chief granting sanction for permission to promote the petitioner does that dispense the requirement of qualifications. From the record, it would be clear that the qualification as set out in Article 14-A(iii)(b) can only be obtained after a sailor is promoted to the rank of Acting POME and works on board a ship. The power under Article 27 was exercised for the appointment of the petitioner as Acting POME

subject to physical disability. In other words, the petitioner was exempted from meeting the physical requirement on account of his low medical category. Article 14 would further indicate that the sailor has to obtain the qualification within two years for being appointed to the rank as Petty Officer Engineering Mechanic. On failure the case has to be reported to the Chief of Naval Staff through the Commodore, Bureau of Sailors with a view to reversion, to leading Engineering Mechanic for inefficiency. It is therefore clear that granting permission for being promoted as Acting POME, does not result in waiving the requirement of obtaining the essential qualification. On the contrary, a reading of Article 14A(iii)(c) would clearly indicate that on failure to obtain the Boiler Room Watch Keeping Certificate, the matter must be referred to the Chief of Naval Staff, with a view to reversion to Leading Engineering Mechanic for inefficiency. This Article so read, it is not possible to construe Article 27 in the manner in which the petitioner has sought to construe it.

6. Even otherwise, if the argument of the petitioner is to be accepted, it would mean that a person in low medical category, once the Naval Chief grants sanction under Article 27, need not possess the essential qualification. In the instant case, the promotion is

not merely by experience. Promotion apart from experience is by a sailor obtaining the necessary qualification. Holding of this qualification is a necessary prerequisite for the sailor appointed as Acting POME to be confirmed to the post of POME. The fact that if the Sailor fails to obtain necessary qualification within two years, he is directed to be treated an inefficient and reverted, would by itself an indication, that there is no provision enabling the Naval Chief to dispense with the requirement of essential qualification. In our opinion, therefore, exercise of power under Article 27 for the appointment of the petitioner to the rank of Acting POME, does not amount to a wavier of the essential qualification or leading to a conclusion that the waiver for appointment as Acting POME, amounts to waiver for confirming the petitioner in the post of POME.

. It is no doubt true that insofar as the case of the petitioner is concerned, once he was categorised as S3A2, the petitioner could not have been placed on board a ship for duties and as such could not have obtained the qualification. In the affidavit-in-reply filed on behalf of the respondents, they have explained that this was done on the basis that the petitioner's medical review was due on 22nd December 2001 and at that review, his position could have been reviewed to a higher grade,

as had happened once when his medical category was reviewed from S3A2 to S2A2. This fact has not been denied on behalf of the petitioner and also could not have been denied as the affiant could not have deposed to any fact based on knowledge but only based on the records available.

. Considering the above, we are clearly of the opinion that the order passed by the Chief of Naval Staff under Article 27, does not waive the requirement of qualification and consequently the order passed by the respondents cannot be said to suffer from any illegality warranting interference by this Court in the exercise of its extraordinary jurisdiction.

7. The learned counsel for the petitioner, however, draws our attention to the observation made by another Division Bench judgment of this Court in the case of **Gadadhar Prasad vs. Union of India & ors. in Writ Petition No.9530 of 2005 decided on 5th July, 2005** wherein the petitioner therein was permitted to make a representation and the respondents were directed to consider the same sympathetically. Considering that, it will be open to the petitioner to make a representation within four weeks from today and on such representation being made, the respondents to consider the same sympathetically in so far as the order of reversion is

concerned and pass orders according to law not later than sixteen weeks from the date of the representation. If the representation is allowed, then to pay to the petitioner the pensionery benefits in terms of the order that may be passed.

8. With the above observations, petition stands disposed of. Rule is discharged. There shall be no order as to costs.

**( F.I. REBELLO, J.)**

**( ANOOP V. MOHTA,J. )**